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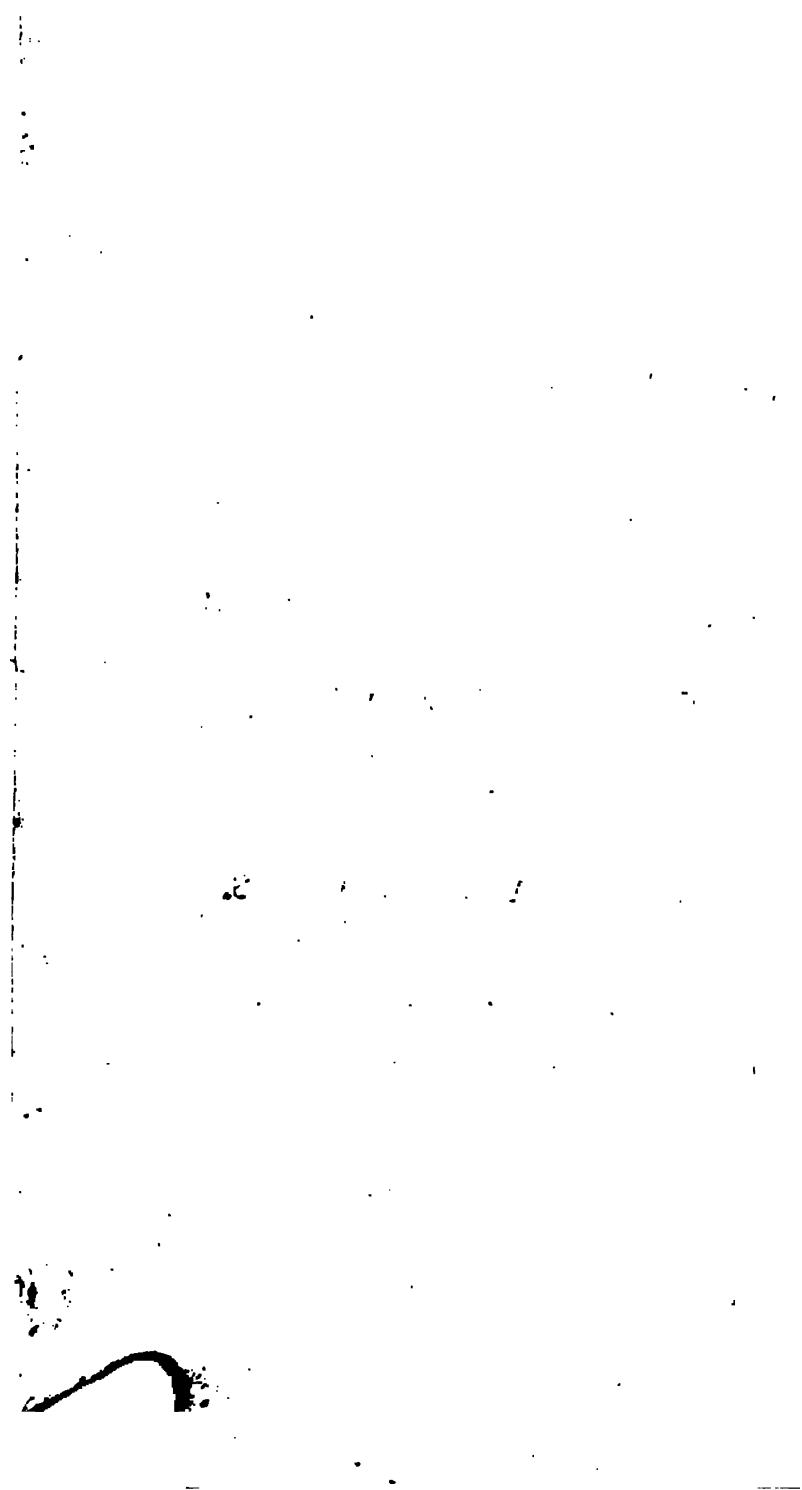






THE
EMPEROR'S
NEW CODE
OF
CRIMINAL LAWS.

Aug 1881
SLM



THE
E M P E R O R ' S
N E W C O D E
O F
C R I M I N A L L A W S .

PUBLISHED AT VIENNA, THE 15th OF JANUARY, 1787.



TRANSLATED FROM THE GERMAN,

BY

AN OFFICER.



D U B L I N :

PRINTED BY JOHN REA,

FOR

MESSRS. MONCRIEFFE, WHITE, BYRNE, AND MOORE.

M,DCC,LXXXVII.

SWD

G.M.

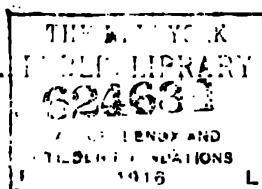


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E·D·I·C·T

EDICT OF THE EMPEROR.

WE, Joseph II. &c. to give a precise and invariable form to criminal judicature, by a general code of laws, which may serve to prevent all arbitrary interpretation; to draw a due line between criminal and civil offences, and those against the state; to observe a just proportion between offences and punishments: and to determine the latter in such a manner, that it may make more than merely a transient impression; such is the spirit with which this general code of criminal laws has been digested and published: it being our command that, from the day of the publication, it shall serve as a general rule of conduct to all our subjects, criminal judges, and to all those whom we have appointed to maintain public order and tranquillity, expressly enjoining them to conform thereto, in regard to every person who, after this general code has reached them, shall be brought before a criminal court of justice, as also in regard to every citizen whom a civil offence, or offence against the state, shall render liable to the established punishments,

ments, which shall always be pronounced by the civil magistrate.

In consequence, all the ancient laws which have been promulgated to determine offences and regulate punishments, are hereby abrogated, annulled, and declared void and of no effect; and no regard shall be had to them, but in the sentences that have been issued from any criminal court of justice, against any persons guilty of criminal offences, who were already in prison at the time of the publication of this general code.

Every criminal judge is especially ordered in future, not to exercise the functions of his charge on any but those who shall be brought before him, and accused of a criminal offence expressed in this general code of laws.

*Given at Vienna, this 13th January,
1787, &c.*

(Signed) J O S E P H.

and beneath,

LEOPOLD, Count of KOLLOWRAT.

THE

THE
EMPEROR'S
NEW CODE
OF
CRIMINAL LAWS.
PART THE FIRST.

CHAPTER THE FIRST.

OF OFFENCES IN GENERAL.

I.

EVERY action contrary to law is not a criminal offence, or a capital crime; and no action contrary to law, shall be considered as criminal, but such as shall have been determined to be so by the present criminal code.

B.

2. To

2.

To every criminal offence belong evil intention and free will.— Evil intention exists, whether before, or at the instant of, any attempt contrary to law (or even in case of the failure of such attempt), the mischief which may result from it, has been premeditated and resolved upon so that the action has been committed with intention that mischief should follow.

3.

No person is guilty of evil intention, whether the mischief which actually follows, was not proposed end of the action; but yet an act has been committed with some evil intention when mischief generally does result from it, probably may be the consequence.

4.

He who, without any evil intention, commits a bad action, though he is blameable, not guilty of a criminal offence: and yet he is held out that action to be considered as an offence from which mischief may follow accidentally.

5.

The want of free-will absolves the offender from

from any criminal accusation, in the following cases :

a. When the offender has totally lost the use of his reason.

b. When the faculties of the offender, being subject to sudden or periodical disorder, the action has been committed while he was under such affliction.

c. When the action has been committed in a moment of drunkenness, purely accidental, and that has not been premeditatedly designed ; or in a confusion of circumstances, or a perturbation of mind, during which time the offender has not known what he did.

d. When he is an infant that has not accomplished his twelfth year.

e. When he who does what is contrary to law, has been obliged to it by force, or by some irresistible power.

f. When the action has been committed through error, in which case no crime can be imputed to the offender, since, had he possessed proper information, he might have conducted himself,

himself, as the laws and good principles directed him.

6.

In the examination of criminal offences, regard must always be had to the malignity of the offender, and not to the disposition, or actual state of the person offended; for crimes may be committed against malefactors, persons out of their senses, infants, those who sleep, and even such as have sought their own disadvantage and death.

7.

It is not only the immediate action that renders a person guilty of a criminal offence, but also every co-operation resulting from evil intention and free will; whether by giving orders, advice, recompence, instruction, assistance; or by any thing which has occasioned the commission of the offence, or by any thing at the moment of its commission, which might have forwarded it, in any manner whatever, or by any thing which has contributed to its being committed with more security.

8.

But he who has not been useful to the offender
by



by his assistance, till after the offence has been committed, or who has derived any profit or advantage from such offence, of which he has had knowledge, is actually guilty of an offence, particular and peculiar to himself, but not of the offence committed, unless that before its commission, he were an accomplice with the offender, by a promise of the assistance and participation that was to follow.

9.

Though premeditation, and evil intention only, while without effect, are not criminal offences, it is not necessary for the proving of the offence, that the bad action be effectually executed. The attempt to execute it is of itself a criminal offence, the instant an evil-disposed person is inclined actually to commit it, and that he has discovered his design, by actions and exterior marks. It has happened that the offence intended has not been committed, from want of power only, on account of unexpected obstacles which have occurred, or some unforeseen accident.

C H A P. II.

OF PUNISHMENTS IN GENERAL.

10.

PUNISHMENT follows a criminal offence discovered and proved. It cannot be decreed but by a judge, appointed to discharge the functions of criminal jurisdiction. •

11.

Nevertheless, a criminal who has been once punished for an offence by an incompetent judge, may again be punished for the same by a competent judge, when the first punishment has not been inflicted according to the letter of the law, nor in proportion to the offence. In this case, the judge, for the purpose of proportioning the punishment, shall have due regard to that which has been already inflicted.

12.

Punishment shall be inflicted according to the present code, without attending to the laws
established

established in the place, where the crime has been committed.

13.

The criminal judge is bound down to the sense and letter of the law, according as the law established, concerning such or such offence, the magnitude and kind of punishment are exactly and expressly set forth. He is not at liberty, under pain of being rigorously responsible, to lessen or increase the punishments prescribed by law : and yet less is he authorized to change the nature of the punishment, or to suppress it entirely, in virtue of an accommodation between the criminal and the party wronged.

14.

The criminal judge should be intent on observing the just proportion between a criminal offence and the punishment assigned it, and carefully to compare every circumstance. With respect to the criminal offence, his principal attention should be directed to the degree of malignity accompanying the bad action, to the importance of the circumstances connected with the offence, to the degree of damage which may result from it, to the possibility or impossibility of the precautions which might have been made

use of to prevent it. With respect to the criminal, the attention of the judge should be directed to his youth, to the temptation and imprudence attending it, to the punishment which has been inflicted for the same offence, and to the danger of a relapse.

15.

If the criminal be found guilty of several criminal offences different in their nature, he shall suffer punishment for the criminal offence, against which the most rigorous punishment has been pronounced; and each criminal offence shall be scrupulously examined, relatively to the most rigorous punishment.

16.

Punishment can only affect him, who has himself committed the offence, or who has made himself guilty of being an accomplice, according to articles 7 and 8. But neither the importance of the punishment, nor its actual infliction on the criminal, shall be prejudicial to his wife, children, relations, heirs, or to any third person who has had no part in the actual commission of the offence.

17. If

17.

If the person guilty of a criminal offence have by means of a secret retreat, by flight, or by death, escaped the hand of justice; when the offence has been of such a nature as to excite the public attention and censure, or which remaining unpunished may give rise to the apprehension of very dangerous consequences: the sentence of punishment shall be pronounced against the absent criminals, as also against him who is dead, in the following manner: the name of the criminal, the criminal offence, and the sentence of punishment which would have followed, shall be exposed on the gallows, and generally made known by the public papers.

18.

Though satisfaction being given to the public, by punishment fully inflicted, the person wronged, or those to whom the offence has been prejudicial, are in no wise restricted from seeking, by all lawful means, for such amends or satisfaction, as may be due to them; by application to the criminal himself, to his heirs, or even by a seizure of his property, unless the interest they may themselves take, pursuant to the present code, in the offence committed, do expressly draw after it the loss of this right.

19. Ex-

19.

Except the criminal punishments established by the present code, no other kind of punishment, for criminal offences, shall in future be inflicted.

20.

No person shall be punished with death, except in cases in which it shall be pronounced according to law in a court-martial. It is resolved, that in case of such court-martial, hanging shall be the only punishment by death that can be inflicted. The criminal condemned to be hanged, shall be hung, strangled, and denied the usual interment. His body, after hanging twelve hours for an example to the people, shall be interred without ceremony or funeral order, wherever it can be done, near the place of punishment.

21.

The other punishments are, *the chain**, imprisonment with hard labour on the public works, imprisonment only, corporal punishment with whip, rod, or stick, and the pillory.

* See Article 25.

lory*. The three first punishments may be augmented according to the nature of the criminal offence, of which a person is found guilty, either by a punishment of longer duration, or by the addition of some chastisements which may make them more sensible.

22.

The degrees relative to the duration of punishment are *a*, of long duration in the second degree; *b*, of long duration in the first degree; *c*, *continual* in the second degree; *d*, *continual* in the first degree; *e*, for a limited time in the second degree; *f*, for a limited time in the first degree.

23.

According to these degrees expressed in the present code, the judge, by conforming himself to article 14, may at pleasure determine the suitable duration of time. In the sentence, the duration of the time of punishment must always be expressed. The duration of a punishment
for

* In the German language, the words here rendered by pillory, are, exposure on the public theatre of shame. See Article 33.

for a limited time, in the first degree expressed in this code, must never be less than the space of *one month*, nor exceed *five years*. The duration of punishment for a limited time, in the second degree, must never exceed *eight years*, nor be less than *five*. The duration of punishment, called *continual punishment* in the first degree, must never exceed *twelve years*, nor be less than *eight*. The duration of continual punishment, in the second degree, must never exceed *fifteen years*, nor be less than *twelve*. The length of the punishment of long duration, in the first degree, must be never less than *fifteen years*, nor exceed *thirty*. The length of punishment of long duration, in the second degree, must never be less than *thirty years*, and it may be prolonged, according to the circumstances, even to *one hundred years*.

24.

In criminal offences, for which there is awarded in this code, the punishment of long duration, in the second degree, the public mark of the hot iron shall be added to the punishment, if it appear that the criminal be remarkably depraved, and that the apprehensions which he may excite, require such precaution to be taken. When the offender is condemned to this punishment,

nishment, he shall be branded on each cheek with the mark of a gallows, so visibly and strongly impressed, as to be effaced, neither by time nor in any other manner whatever.

25.

The punishment of the chain is inflicted in the following manner: the criminal suffers severe imprisonment, and is so closely chained, that he has no more liberty than serves for the indispensable motion of his body. The criminal condemned to the chain, suffers corporal punishment, every year, for an example to the public.

26.

The following degrees relate to the punishment of imprisonment: *a*, the *most rigorous imprisonment*; *b*, the *severe imprisonment*; *c*, the *milder imprisonment*. In these three degrees of imprisonment, the criminal is to work out a task, proportioned to one of the three degrees.

27.

In cases of the most rigorous imprisonment, the criminal is confined day and night to the spot assigned him, with a ring of iron fastened about his middle; and he may be loaded with
additional

additional irons, if the kind of work imposed on him permit, or the danger of his escape render it necessary. When a criminal is condemned to suffer imprisonment, he has no bed but the floor, no nourishment but bread and water, and all communication, not only with strangers, but with his acquaintance and relations, is refused him.

28.

A criminal, condemned to the severe imprisonment, is to be treated as above, with this difference only, that the irons on his feet shall not be so heavy, and that he shall be allowed a pound of meat on two several days in the week.

29.

It is a consequence of the sentence which inflicts *the chain, the most rigorous imprisonment, or the severe imprisonment*, that the criminal can make no will from the day judgment has been pronounced against him, to the completion of his punishment; and also that every will which he may have already made, before judgment was pronounced, or directly after his being apprehended, becomes null and without effect.

30. The

30.

The criminal condemned to the milder imprisonment is confined by irons, less heavy indeed, but such as to prevent his escaping without considerable force and address. To a criminal under this sentence, a better nourishment is allowed, but he has nothing to drink but water. Nor is he to speak or hold communication with his relations or acquaintance, unless very strong reasons can be shewn and declared, and that in the presence of the jailor, if the circumstances require it. Even the milder imprisonment may be rendered less mild, by more rigorously fasting some part of the week. The prisoner, on such days of fast, will receive only one pound of bread.

31.

Hard labour on the public works has also degrees of augmentation, which depend on greater difficulty, greater fatigue, or the prolongation of the task imposed. The fixing of the proper degree of augmentation, is left to the fair consideration of the criminal judge, according to the particular circumstances which take place in each country.

32. Cor-

32.

Corporal punishment, with whip, rod, or stick, is either inflicted by itself, as a punishment, or to increase that of imprisonment, or hard labour on the public works. This punishment is to be publicly inflicted on the criminal; the just degree of it, the number of strokes to be given at a time, as well as the repetition of the chastisement, depend on the sound prudence of the judge, and it is sufficient for this purpose, for him to see the form of the body of the criminal, who, besides, must not receive more than one hundred strokes at a time.

33.

Exposure in the pillory is performed in the following manner. The criminal, condemned to this punishment, is chained and guarded, on an elevated scaffold, in a place sufficiently extensive to contain a concourse of people. He is thus exposed to the view of the public, an hour at a time, for three days following, and on a paper fastened to his breast, is written the nature of the criminal offence of which he is found guilty*.

34. Amidst

* *This punishment is very different from that of the pillory in England, but the translator had not a better word to express it. See note to Article 21.*

34.

Amidst the augmentations of criminal punishments, must be reckoned, *a*, the public notification of the criminal; *b*, the confiscation of his property; *c*, the loss of his nobility. The two first augmentations cannot be inflicted by the judge, unless they be awarded against an offence expressed in the present code.

35.

The public notification of a criminal, consists in making generally known, the name of the criminal, his description, the crime committed, and the sentence of punishment which has been pronounced, in the manner used in other cases, according to the custom of each country in public notifications.

36.

Every person guilty of a criminal offence, loses the enjoyment of his private property, from the time of his being found guilty. From this possession must be deducted what is sufficient for the maintenance and support of his wife and children, and the surplus be lodged in the funds of the criminal chamber, and employed solely for the purpose of supporting prisoners,

C

and

and of inrolling and maintaining the inferior officers of justice.

37.

If the criminal condemned, die during his punishment, his private and freehold property is adjudged to those who are the lawful heirs, notwithstanding his last will may be existing, and though it should have been made at any time whatever. But the criminal whose time is expired, is restored to all the rights of his property.

38.

In every criminal sentence, by which the guilty person who enjoys nobility, as a property which is personal, has been condemned, it shall be expressly declared, that the criminal loses, in his person, all the rights and prerogatives attached to nobility, according to the constitution of each country. But this loss affects only the criminal, and not his wife, nor the children he may have had before the degradation of his nobility.

39.

The secret mark of hot iron is also appointed to be an augmentation of punishment. It is effected

fectured by means of a distinct and indelible mark of a gallows on the left shoulder; but inflicted on foreign offenders only, who are punished in the same manner out of the hereditary dominions.



C H A P. III.

OF OFFENCES IMMEDIATELY RELATIVE TO
SOVEREIGN PRINCES, AND THE STATE.

40.

THE offences immediately relative to sovereign princes and the state, are, *a*, the crime of high treason; *b*, treason against the state: *c*, sedition and tumult; *d*, open force; *e*, the abuse of judicial employments; *f*, the forgery of bills of the state; *g*, the coining of false money; *h*, assistance given for the escape of a criminal; *i*, the concealment of an offender; *k*, assistance lent for his evading military service.

41.

He who, forgetting the grandeur and dignity which God grants to lawful princes, lays violent hands on the person of the sovereign, and from

any evil design against his person, attacks it in any manner whatever, though there result from it no injury, is guilty of high treason.

42.

This crime shall be punished by a confiscation of property, which, in the present case, will be employed entirely for the advantage of the state, without any respect to the children the prisoner may have, and by the most rigorous punishment of long duration in the second degree.

43.

He who, forgetting the respect due to the sovereign, has the rashness to attack him by a public speech, or by writings, is guilty of high treason.

44.

The punishment for this offence, is the milder imprisonment for a limited time, in the second degree.

45.

He who, from ingratitude towards the country or state of which he is a subject, or in which he has only his abode and protection, granted and

and secured, forms an inimical enterprise, which, whether immediately or not, tends to the public injury, be it publicly or privately, by advice or positive action, by taking, or without taking up arms, alone, or with accomplices, by conspiracy, treason, divulging secrets of state, alliance with the enemy, assistance and help given to the enemy, or any action of this nature, is guilty of treason against the state, without distinction of person, whether he be a foreigner or a native of the country.

46.

This criminal and his accomplices, shall be punished in the manner expressed in article 42.

47.

With respect to these offences, so dangerous in the consequences they draw after them, even those shall be proceeded against as so many accomplices, who having had knowledge of the treason intended, have not given immediate information of it to the magistrate.

48.

Any Governor, or Chargé d'Affaires, whether foreigner or subject, who reveals the secrets of state with which he becomes officially acquainted,

quainted, shall also be considered as a traitor to the state: and more particularly so, he, who going purposely into any of the provinces in time of war, in camp, or in places occupied by the army, or only a single corps, to spy, discover something, and communicate it to foreigners; or if in time of war, to the enemy, whatever be the object of his observation, whether important or trifling, of disadvantageous consequence or not.

49.

The punishment of spies is determined by the laws of war, and military judicature only has authority to pronounce it. A traitor to his country is, besides, punished with imprisonment, of which the duration and the rigour must be proportioned to the importance of the object discovered and revealed, to the means of address it was necessary to employ, to the injury which resulted, or might have resulted from it to the state. But it must be inflicted with more vigour, when the criminal, in the character of Governor, or *Chargé d' Affaires*, in the service of the empire, has knowingly violated an essential duty of his charge or employment, for which he has sworn allegiance to the sovereign.

50. Every

50.

Every association and assembly of persons, that is unwarranted and self-authorized, for the purpose of resisting the superior magistrate, is guilty of sedition and tumult, whatever may be the intention of such resistance; whether to obtain some condition from the magistrate, or not to discharge some duty he may have imposed, or in any manner whatever, to prevent the execution of a measure taken and determined. Any violence, whether or not directly made use of against the person of the magistrate, or against any *intendant* or inferior officer, appointed to put his orders in execution, shall also be considered as sedition and tumult. All subjects and communities also render themselves guilty of this crime, who assemble against their jurisdiction, village, bailiff, officer of justice, or overseer.

51.

All those are accomplices and partakers in those crimes, who have permitted any assembly or rendezvous in their houses, in which the assembly has been projected; who have excited the community to assemble, or who have given any plan for the same, or with any know-

ledge of it, have neglected to give information of it, to the magistrate.

52.

Those also are accomplices in these crimes, who have allowed themselves to join an assembly which they know to have riotous intentions, and who have remained a part of that assembly, though they might not be proved guilty of having designed to give actual assistance, or of really making use of any violence.

53.

Every person who allows himself to join in any sedition or tumult, puts his life in danger, if the assembly have gone to such extremes, that it could not be dispersed but by open force. When this crime is taken cognizance of, the usual proceedings of a court-martial take place; the criminal is judged on the spot, and after different deliberations, and serious attention to the crime and the criminal, there is no kind of punishment which may not be inflicted. With respect to the crime, attention must be had to what might have been the extent of the design; to the danger of the enterprise; to the means employed in its execution; and to the importance of the consequences resulting. With respect to the criminal,

criminal the degree of participation he has had in the plan, as well as in its actual execution, must be considered. In cases of very great malignity and public damage, the authors of the sedition, besides the confiscation of their property, which goes wholly to the coffers of the state, without any regard to the children they may then have, are condemned to suffer death.

54.

He who, with others assembled, enters the district, house, or abode of another, and there makes use of any violence against his person, goods, or possessions, is guilty of the offence of open force, though the action have been committed with the intention only of getting possession of his demanded rights.

55.

The punishment for the offence of open force, is the severe imprisonment for a limited time, in the first degree, and condemnation to the public works. But he against whom open force has been used, has still the right, notwithstanding this punishment, to seek for recompense, and adequate satisfaction.

56.

He who personally and violently resists the
authority

authority of a judge or an officer of justice, in the functions of his authority, is guilty of open violence : as also, he who opposes, in like manner, a guard, or the person of him who guards, and whose duty it is to enforce the execution of an order issued by the magistrate, though no wound result from such resistance.

57.

Such an offender shall be condemned to the severe imprisonment, for a limited time, in the first degree. But if the resistance were considerable, and if it occasioned injury and wounds, the severe imprisonment, for a limited time, in the second degree, shall be pronounced on the criminal.

58.

He who, in possession of a charge entrusted to him, employs his power and authority to the prejudice of any one, either in his honour, property, or otherwise, contrary to justice ; who neglects the rights and interests of any one ; who assists any one in the execution of an evil design, and of an action detrimental to a third person, is guilty of the offence of abuse of judicial authority.

59. A judge

59.

A judge is also guilty of this crime, who, from a present, or otherwise, from passion, and with partial intention, engages himself to divert the operations of common justice, refuses to administer justice where due, or pronounces a judgment evidently unjust.

60.

The punishment for this offence, is the severe continual imprisonment, in the first degree, and condemnation to the public works. This punishment may be augmented by the pillory or *public exposure*, and the public notification of the criminal.

61

All those should be considered as partakers of this crime, who, by promises, presents, immediately given or not, yet given; or by any other criminal method, endeavoured to engage the judge or magistrate to the abuse of his office, whether their design be successful or otherwise, whether they act for their own interest, or the interest of another.

62

The punishment for this offence, is the milder

milder imprisonment for a limited time, in the first degree, and condemnation to the public works. It may be augmented according to circumstances.

63.

He, who attempts to counterfeit the public bills of the state, which circulate as money, or for which the public funds are answerable, whether the attempt succeed or not, whether there result from it any prejudice to the funds, or to a third person, or otherwise; whether the bill counterfeited, concern the public funds of the state, or that of a foreign state, is guilty of the offence of forging bills of the state.

64.

And he also is guilty of this offence, who falsifies a public bill of the state, however good and valid in itself, by changing to a greater sum, that for which it has been expressly made, whether such falsification be found of trifling or considerable importance, or there have resulted from the exchange or not, any real injury.

65.

For this offence, in the case of article 63, the imprisonment of long duration, in the second degree,

degree, is pronounced to be the punishment, but in the case of article 64, the severe continual imprisonment, in the second degree, with condemnation to the public works, must be inflicted. In a case in which are conjoined circumstances of more importance, and that are particularly remarkable, the punishment may be augmented by the pillory, and the public chastisement of corporal punishment.

66.

Those are accomplices in this crime, who imitate the signatures at the bottom of public bills, counterfeit the engraving of the arms, manufacture foreign paper, the moulds, types, presses, or whatever may be necessary to the forgery of false bills of the state, and knowing them to be such, deliver them to the person falsifying, in order to assist in the forgery, who in what manner soever have co-operated in the forgery of false bills.

67.

The punishment for such co-operation, is precisely that fixed in article 65.

68.

He is guilty of false coining, who without the
permission

permission of the sovereign, coins money resembling that of the hereditary dominions, or resembling the foreign coin, which passes in the hereditary dominions, though the standard and weight should be conformable to the current money, and though it should be even of better alloy.

66.

The punishment for false coining, is the severe imprisonment, for a limited time, in the first degree, with condemnation to the public works.

70.

He also is a false coiner, who, in imitation of the coin of the hereditary dominions, or in imitation of any coin current therein, coins money of bad alloy, but with a fine and lawful metal; or who coins unlawful money with metal of bad alloy; or otherwise by fraud, gives false money the quality of good.

71.

The punishment for this offence, is the severe continual imprisonment, in the second degree, and condemnation to the public works.

72. Those .

72.

Those are accomplices in this offence, who fabricate the tools, and instruments proper and useful for coinage, of any kind whatever; who knowingly find materials for false coinage, or who have co-operated in whatever manner in such false coinage.

73.

The punishment for assisting in false coinage, is the severe continual imprisonment in the first degree, and condemnation to the public works.

74.

All those also shall be proceeded against as false coiners, who reduce the current money of the hereditary dominions, or of foreign states, by whatever manner it may be from its intrinsic value, and the real quality according to which it has been coined.

75.

The punishment for this offence, is the severe continual imprisonment, in the first degree, and condemnation to the public works.

76.

He who, by his assistance, facilitates the escape

cape of a person, whom justice has apprehended, or favours him with the means of his escape from the prison or guard which confines him, is guilty of a criminal offence, without distinction, whether the assistance has been given to a prisoner whose trial is before the judge, and who consequently has not been found guilty, or to a condemned criminal, confined and under punishment.

77.

Should the means to favour an escape have been afforded by the magistrate himself, in a direct way or not, but with this cognizance and consent, by giving the opportunity, or by an indulgence contrary to law; the punishment for this offence, is the severe continual imprisonment, and even in the second degree, if such assistance have been given to state prisoners, assassins, robbers, or incendiaries. Such an offender loses at the same time the exercise of his judicial authority, which may be united to the possession of a property given him, for no longer time than he is invested with such authority. This punishment may be increased by public notification.

78.

If the assistance to favour an escape have
taken

taken place without the participation or connivance of the magistrate, his locum tenens, or officer appointed to guard the prisoner : the offender, in this case, is condemned to the public works, with severe labour for a limited time, in the first degree.

79.

If this same assistance, to favour an escape, have been afforded by an offender who has not thereby violated the duties of the charge intrusted to him, he shall be punished with the milder imprisonment for a limited time, in the first degree, and by condemnation to the public works.

80.

The prisoner, who endeavours, by force, or other means, to escape, shall suffer corporal punishment, and be loaded with heavier irons. If he has effected his escape by force or address, his punishment during the time which remains to be compleated, shall be augmented by fasting, corporal punishment, heavier irons, and, if the circumstances demand it, he shall be chained more closely, without any regard but to his having effected his escape, and not considering any other crimes he may afterwards have committed,

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mitted, and for which he shall be particularly tried.

81.

He who knowingly conceals in his house, a man branded with the hot iron, a man escaped from prison or punishment, or a man whom he knows to be guilty of an offence, or affords such a man only a temporary abode, though it be not a hidden retreat, is guilty of the concealment of a criminal, though by so doing he contributes nothing to the commission of the offence, and consequently cannot be charged with greater participation of it.

82.

He also is guilty of this offence, who keeps concealed, either at his own house, or in any other place, the object of the offence, for example, the body of a man murdered, the property stolen, &c. or any instrument immediately made use of in the commission of an offence.

83.

And he, in short, is also guilty of this offence, who provides a person guilty of a criminal offence, of which he has knowledge, with clothes to prevent his being known, or otherwise acts
to

to the effect that he remain concealed from the eyes of justice, and without being discovered.

84.

The punishment for having concealed an offender, is according as it may first have been decided, that the offender concealed is more or less dangerous, more or less injurious to society; the continual imprisonment for a limited time, the milder imprisonment, or the more rigorous imprisonment, and condemnation to the public works.

85.

Nevertheless, he who conceals a person related to him, in a right or collateral line, his brother or sister, his brother-in-law, or sister-in-law, her husband or his wife, or his own wife, or the brother or sister-in-law of his wife, though he well knew the person concealed was actually guilty, shall, according to the degree of his being nearly related to the person concealed, be treated with less rigour, under the express condition that he have not in any degree assisted, for his own part, in the execution or commission of the offence.

86.

He who, knowingly, persuades a soldier, who
D 2 has

has been sworn under the colours of the hereditary dominions, or any servant that belongs to a military corps of the hereditary dominions, to quit the service, or when the foldier has not of himself taken such a resolution, who suggests it to him, by his advice or action; or he who assists a deserter, that has of himself resolved to desert, either by purchasing his horse or arms, showing him the road, by means of clothes, retreat, or abode in his house, or by any other manner whatever, and thereby facilitates desertion, or takes away the means of searching for and discovering him, is guilty of the encouragement of desertion from military service.

87.

When he who has been guilty of this offence is fit for military service, he shall, without any exception, enter into it in the room of him to whom he has furnished the means of desertion. If birth, or any other circumstance, render the offender incapable of serving, the offender, besides paying into the treasury for the war department, double the sum given to a recruit, shall suffer the milder imprisonment, for a limited time, in the first degree. This punishment shall be changed to imprisonment, for a limited time, in the second degree, and to condemnation

tion to the public works, when the guilty person is not capable of making good the payment to the treasurer of the war department.

88.

The laws of war have determined how, and in what manner, desertion from the service shall be punished, and military judicature alone has authority to take cognizance of, and pronounce the judgment.



CHAP. IV.

OF OFFENCES IMMEDIATELY RELATIVE TO HUMAN LIFE AND BODILY SAFETY.

89.

THE crimes immediately relative to human life and bodily safety, are, *a*, simple murder; *b*, murder committed with an intention to rob; *c*, assassination; *d*, the charging of another to murder; *e*, duelling; *f*, abortion; *g*, the exposure of infants; *h*, violent wounds; *i*, suicide.

90.

He is guilty of murder, who attacks a man with murderous weapons, or who lays violent

D 3

hands

hands upon him, so that the wound necessarily becomes mortal, and the death of the wounded follows, either immediately, or some time after, unless that in the interval the wounded person have been completely cured.

91.

The punishment of murder, is the severe imprisonment, of long duration, in the first degree.

92.

By simple murder, and the other kinds of murder, when the tie of paternal, maternal and filial affection, of conjugal faith, of relationship to the degrees expressed in article 85, is injured and broken; and when by this murder a *close* alliance is violated and broken, and in consequence of which alliance, the criminal was the more obliged to respect the person slain; the punishment shall be condemnation to the severe imprisonment, of long duration, in the second degree, and shall receive besides some sensible augmentation.

93.

These augmentations take place, when it appears, by the means employed to murder, that
the

the murderer was influenced by particular cruelty, and that he had evident intention to make the person slain more sensible to his assassination.

94.

If a murder have been committed in the company of several persons, all those who have contributed to it with knowledge and premeditated design, shall be punished as the murderer himself, let them have laid violent hands on the person assassinated or not.

95.

Passion, precipitation, quickness of disposition, disturbance, tumult, do not justify the criminal, especially with respect to the offence of murder. Yet may the punishment, in such cases, be softened according to the circumstances.

96.

Nevertheless, he, who has killed another from just necessity, for instance, in defence of himself, shall not be considered as a murderer. But the excuse of necessity is valid only, when the murderer proves, either that there are sufficient grounds for concluding, that according to the circumstance of person, time, and place, and

without having given occasion for it, he was attacked by the person slain, in such a manner, that he had reason to fear he should be wounded, or that his life was in danger : or when he proves that he has made use of the violent defence of which his fellow creature's death has been the consequence, for the protection of his property, or that of his neighbour, or of his liberty against an unjust aggressor, of whom he could not get the better, but with the danger of being himself wounded or killed.

97.

But he who has killed a man, though truly in his own defence, is guilty of the crime, if he have exceeded the bounds marked out by a just necessity ; because he might have been able, without injury or danger, to escape from the attack, otherwise than by the death of the aggressor, or because he could have got the better of the aggressor without killing him ; or if he had himself at the time *occasionea* the attack against which he had afterwards to defend himself : in this case, however, the punishment is only condemnation to imprisonment, of the limited kind, in the first degree, and to hard labour on the public works, and this punishment may be augmented as particular circumstances require.

98. He

98.

He who attacks and kills a man, with the design of stealing his property, or the property of another intrusted to his care, is guilty of murder with intent to rob, let the attack be in the open street, or in the house, abode, or habitation of the person slain.

99.

The punishment for murder, with an intent to rob, is the most rigorous imprisonment of long duration, in the second degree, except that when in murder of this kind, a particular cruelty manifests itself in the murder, instead of the most rigorous imprisonment, that of the chain be pronounced against him.

100.

He who, by stratagem, arms or poison, has committed a murder in a manner which prevented the person murdered from using any precaution or defence, is guilty of assassination.

101.

The punishment for assassination, is condemnation to the chain, of long duration, in the second degree.

102. He

102.

He who, by caresses, promises, presents, threats, force, or any imaginable manner, endeavours to engage any one to the assassination of a third person, is guilty of the crime of charging another to murder, whether the charge be executed or not, whether the attack or the death resolved on result or not.

103.

In the punishment of this offence, there is only one difference to be observed. If the charge have not been accepted, or having been excepted, no attack has followed, the offender shall be punished with the severe imprisonment, for a limited time, in the second degree, and by condemnation to the public works. If, the charge having been accepted, an attack has really been the consequence, but not death, the severe continual imprisonment, in the first degree, and condemnation to the public works shall be pronounced against the criminal. If the murder with which he has been charged, has been actually committed, the criminal shall be proceeded against as the murderer himself.

104.

If there have existed between him charged to
commit

commit the assassination, and the person murdered, any of the relations mentioned in article 92, an augmentation of the punishment may in such a case take place.

105.

He who challenges another to combat with murderous weapons, on whatever reason the challenge be grounded, is guilty of duelling.—The respect due to the civil laws and to government, which protect every injured person, his property and his honour, against every offender, with the maintenance of good order, tranquillity, and public safety, do not allow any citizen to take arms to do himself justice, thereby putting in danger his own life, that of his adversary, and fellow-citizens.

106.

The person challenged is as much guilty of this offence as the challenger, the instant they are both disposed to combat with murderous weapons, even though death should not be the consequence to both parties, though only a single wound should be received, though there should be none at all.

107. If

107.

If the death of one of the duellists result, the survivor, if he has been the challenger, shall be proceeded against as a common assassin. If it be the party challenged that survives, he shall be punished by the severe continual imprisonment in the first degree, and by condemnation to the public works.

108.

The right of suing for more complete satisfaction from the survivor is reserved to the widow and children of the deceased, whether he be the challenger or the person challenged.

109.

If neither of the combatants fall, the challenger shall be condemned to the severe imprisonment, for a limited time, in the first degree, and to hard labour on the public works. The person challenged shall be condemned to the milder imprisonment, for a limited time.

110.

The accomplices of this offence are, *a*, those who at the time of the duel have acted as assistants, or, as they are called, seconds to the combatants; *b*, those who have borne any part
either

either in the challenge or its acceptation; as also, & those who have used any menaces or shewn any contempt to him, who from fidelity to the laws has endeavoured to elude the challenge.

111.

The punishment of an accomplice in a duel, is the milder imprisonment, for a limited time, in the first degree: but this punishment may be prolonged against the seconds.

112.

A woman who knows herself to be big with child, and uses any means that might occasion an abortion, or bring on a delivery, so that the infant do not come alive into the world, is guilty of a criminal offence; let her motive for such offence be what it may.

113.

The punishment for the occasioning of abortion is the limited duration of imprisonment, in the first degree, and condemnation to the public works. This punishment is always augmented when married women are the offenders.

114.

Those are accomplices of this crime, who have

have advised and recommended the means for the abortion; who have procured such means, or who have knowingly contributed to the offence in any manner whatever, whether such assistance be occasioned by the desire the woman expressed for it, or without her desire.

115.

The punishment of an accomplice in this crime is the milder punishment, for a limited time, in the first degree, and condemnation to the public works.—This punishment may be increased when the accomplice is convicted of being the father of the infant.

116.

He who exposes a living infant, of an age in which it is impossible it should provide for the safety of its life, in order to abandon it to the danger of death, or leave its deliverance to chance, is guilty of the crime of the exposure of an infant, whatever be the motive he may have had for committing it, without any sort of distinction, whether the infant exposed suffer death in consequence or not.

117.

a. If the infant be exposed in a lonely place,
not

not usually frequented, or if it have been so wrapped up, that the passers by could not observe it, or without having absolutely endeavoured to stop its cries, they had nevertheless been rendered more difficult to be heard.

b. If the exposure have been made by a person whose duty, prescribed by natural as well as civil laws, was to employ his cares for the preservation of the infant.

c. If the death of the infant exposed have followed before it was found, and were certainly caused by such exposure; the punishment in the two first cases is the first degree, in the last case the second degree of the same continual imprisonment: and this punishment may be augmented according to the degree of malignity made use of.

118.

If it should happen that the exposure was in a place commonly frequented, so that the immediate perception of the infant was a necessary consequence of its situation, and that there was every possible reason to expect it, the punishment is imprisonment for a limited time, in the first

first degree, and condemnation to the public works.

119.

He also is guilty of a criminal offence, who through passion, revenge, enmity, or cupidity, lays violent hands on any person, by which violence the person attacked has not been killed, but considerably wounded.

120.

The punishment for this offence is in proportion to the degree of malignity and force made use of, and of the injury which has resulted, either the severe imprisonment for a limited time in the first degree, or the milder imprisonment; except that when the wounds have put the person's life in danger, or bring on future loss of health, or when a particular degree of malignity has been made use of, in that case the punishment awarded is imprisonment for a limited time, in the second degree. In every case satisfaction is to be made to the person wounded, and the right of seeking recompense reserved as much to him as to his wife and children, when the wound affects their immediate subsistence, or is otherwise prejudicial and hurtful.

121. He

121.

He, who through evil design has maimed and crippled any person in one of his limbs, though the action were committed by the desire of the maimed person, is guilty of a criminal offence.

122.

The punishment of this offence is the severe imprisonment, for a limited time, in the first degree, and condemnation to the public works. It may be augmented according to the force made use of, and the considerable injury which may result from the offence. Satisfaction and recompense are reserved to the person maimed (when the action has not been committed at his desire), as well as to his wife and children.

123.

Suicide is, when a person takes away his life by some violent action producing death, at a time in which no sign of a disordered imagination or of a more serious malady, destructive of reason has been perceived. The body of the suicide, if he be dead on the spot, or without some evident repentance, shall be thrown on the earth by the executioner. If between the action and the consequent death he have shewn
E himself

himself repentant, his body shall only be refused the usual funeral ceremonies, and shall be interred without ceremony or procession.

124.

If suicide have been committed for the purpose of avoiding some just apprehended punishment for a criminal offence, the name of the person, with the particulars of his crime, however long it may be, as proved before the judge, shall be fixed on a gallows, and publicly notified.

125.

If he, who has projected and intended the act of suicide, but through mere accident, or some other cause, contrary to his will and participation, has failed in the attempt of its execution, whether he have wounded himself or not, he shall be imprisoned, where every violent action on himself becoming impossible, he shall remain for an indeterminate time, till he be convinced by instruction and reason, that the preservation of himself is a duty towards God, to the state, and himself, and till he shew a thorough repentance, and give hope that he will amend his conduct.

CHAP.

C H A P. V.

OF CRIMINAL OFFENCES IMMEDIATELY RELATIVE TO HONOUR AND LIBERTY.

126.

THE crimes immediately relative to honour and liberty are, *a*, calumny, *b*, rape; *c*, the forcibly carrying away of a man; *d*, or of a woman; *e*, unlawful imprisonment.

127.

He is guilty of calumny, who, in the punishable design of injuring a person, or depriving him of those advantages which might accrue to him, of hindering him of his rights, or of doing him any sort of injustice, imputes to him an offence or an action contrary to law, of which he is not certain; unless he appear before a lawful magistrate to accuse him against whom the denunciation is made.

128.

And he also is guilty of this offence who, even when he appears before a lawful magistrate,

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and

and accuses a person of a crime or action contrary to law, can neither prove the truth of his accusation, nor produce a good reason for which he has brought such an accusation forward.

129.

If the calumny be not prejudicial or injurious to the person calumniated, the punishment is the milder imprisonment for a limited time, in the first degree, and condemnation to the public works, to which corporal punishment may be added. But if the person calumniated have received prejudice or injury, or if the calumny have been spread with malicious intent, the punishment is the severe imprisonment for a limited time, in the first degree, and condemnation to the public works, with public notification of the criminal. But the notification shall be drawn up with such caution that the calumny do not spread to the great disadvantage of him on whom it has fallen, and that the recollection of it be not renewed. The punishment is to be prolonged or augmented according to the higher degree of malice made use of, or the damage that has resulted from it; or if the connection of parent and the duty of respect, according to article 52, have been yet further violated by the calumny.

calumny. Moreover, the calumniated person has still reserved the right of entire satisfaction and recompense.

130.

A rape is committed by him who in the shameful intention of abusing a woman, renders her incapable, by any strong and powerful means, or by the assistance of an accomplice, to make any opposition to his criminal desires, and who in this state of violence actually abuses her.

131.

He also is guilty of this crime, who, by producing deadly weapons and threatening to make use of them, forces a woman to submit to this shameful abuse.

132.

The punishment for a rape is the severe continual imprisonment in the first degree, or condemnation to the public works: which, according to the degree of violence made use of, and of the injury which might result from the abuse, may be increased. The woman violated, to whom the right of satisfaction and recompense is reserved, may at the same time ju-

ridically obtain some sufficient settlement, proportioned to the wealth of the criminal.

133.

The assistance given in the commission of a rape, shall be punished by the severe imprisonment for a limited time in the second degree, and by condemnation to the public works; which, according to circumstances, might be augmented by corporal punishment. Those who have been aiding in the commission of a rape, are also obliged to grant satisfaction and recompense, and settlement of some kind, to the person violated, if the property of the criminal alone be not sufficient.

134.

He, who without the knowledge and consent of the lawful magistrate gets possession, by force or address, of any man whose abode is within the confines of the state, to deliver him, contrary to his will, to a foreign state, to a foreign power, or otherwise in the hereditary dominions, making use of any unjust authority, is guilty of forcibly carrying away a subject.

135.

The punishment for this crime is the severe imprisonment

imprisonment of long duration, in the first degree; and this punishment may be augmented, if the criminal is a natural subject.

136.

He also is guilty of this crime, who within the confines of the hereditary dominions enlists for foreign service, or for emigration to a foreign country; though there should have been made use of neither trick nor force, and though the person enlisting were a natural subject of the state, to which he has been useful by such enlisting.

137.

He who enlists for a foreign service, or he who enlists a man belonging to one of our military corps for emigration only into a foreign country, shall be punished according to the laws of war, by which military judicature alone has a right to pronounce sentence.—If the enlisting take place in different circumstances from those first mentioned, the punishment is the continual condemnation to the public works; which may be augmented when the guilty person is a natural subject, or that the person enlisted has been actually taken from the hereditary dominions.

138.

He also is guilty of forcibly carrying away a subject, who by force or address secretly carries away a minor past the years of infancy, and who is under the care of a father, a tutor, or any other person, from his father, tutor, or him under whose care he is, whatever reason he may have for such carrying away, though there have resulted from it any injury to the infant or not.

139.

If there have resulted no injury to the infant from his being carried forcibly away, the punishment awarded is the milder imprisonment for the limited time in the first degree. If with the carrying away of the minor another offence have been committed, the most rigorous punishment established relative to this offence shall be augmented, or the milder punishment shall be changed to the severe continual imprisonment in the first degree, and also to condemnation on the public works. This punishment takes place when a minor has been forced away with the design of making him embrace the principles of any other religion than that in which he was born.

140.

He who gets into his possession, by force or address,

address, any woman contrary to her will, with the intention of obtaining her consent to marry, or shameful debauchery, for himself or for any other, and carries her, notwithstanding her opposition or protestation, from the place of her abode, is guilty of forcibly carrying away a woman, let the guilty person succeed in the accomplishment of his design or not.

141.

The punishment of this offence, is the severe imprisonment for a limited time, in the second degree, and condemnation to the public works, with a general notification of the criminal.—To a woman so injured, is reserved the right of satisfaction and recompense.

142.

And he also is guilty of forcibly carrying away a woman, who, knowing that she is bound by lawful marriage, or under the protection of a father, or guardian, or any just authority, carries her away, without her consent, from those who have just authority over her.

143.

The punishment for carrying away a woman,
is

is the milder imprisonment for a limited time, in the first degree, and confinement to the public works; for which also, the exact duration, and rigid augmentation shall be pronounced according to the circumstances which have occasioned the action, accompanied or followed it.

144.

The punishment of aid and assistance afforded in this offence, whether they have been given either to consummate the action, or to conceal it, is the milder imprisonment, for a limited time, in the first degree.

145.

He, to whom, according to law, the constitution of the country, the judicial power, and the right resulting from thence, it does not belong to conduct a prisoner before an established jurisdiction, and who, of his own private authority, puts any one in prison against his will, or keeps him in confinement, or is a hindrance to him, in any way whatever, in the use of his liberty, is guilty of a criminal offence, whatever may have been the reason that has induced him so to do.

146. But

146.

But in this offence are not included these cases; *a*, when an acknowledged malefactor, or *b*, a person considered as a man hurtful and dangerous to the security of the community, is kept in confinement until he can be delivered over to the hands of justice; or when a father keeps in confinement a child past the years of infancy, or a tutor, a child entrusted to his care, by way of domestic correction. However, in the two first cases, a report of the detention shall be immediately made to the judicial power; and in the last case, the child shall not be confined more than three days at farthest; nor shall any thing be added to this punishment that may be prejudicial to its health.

147.

The punishment of an imprisonment unauthorised, and proceeding from private authority, is the milder imprisonment for a limited time, in the first degree, which may be rendered more rigorous, by its longer duration, or rigid augmentation, in cases alone where damage, resulting from this imprisonment, has been sustained by the person detained, or where some other inconvenience has attended that of the privation
of

of liberty ; and the right of entire satisfaction and recompense is, moreover, reserved to the person wronged.

C H A P. XI.

OF CRIMINAL OFFENCES IMMEDIATELY RELATIVE TO POSSESSIONS AND RIGHTS.

148.

THE crimes immediately relative to possessions and rights are ; *a*, fraud [*stellionatus, falsum*] ; *b*, theft ; *c*, robbery ; *d*, the crime of being an incendiary ; and, *e*, bigamy.

149.

Any man is in general guilty of fraud, who, by any stratagem or contrivance whatever, tries to appropriate to himself the property of another, or to wrong any one with an evil design, in his possessions, his honour, his liberty, or his rights, without regard to the means the deceiver has employed, and without examining whether he have attained the end of his project or not.

150. But

150.

But he in particular is guilty of a fraud, *a*, who finds title deeds, or contracts, and who with, or without, the imitation of another's handwriting, either adds himself the signatures of the parties without their knowledge, or causes them to be added by others; or who in legal contracts, already signed and sealed, makes alterations in the tenour, without the participation and consent of the contracting parties, and to their disadvantage; for instance, when he adds new obligations, or extends those which already exist, or effaces entirely the obligations made and agreed upon, or diminishes them, or when in like manner, or in any way whatever, he tries to render valid and legal, illegal contracts, or falsifies the sense or tenour of legal ones.

151.

Those in like manner are guilty of fraud, *b*, who in their own, or another's affairs, bear false witness before a court of justice, or suborn any one to bear false witness; whether the subornation tend to their own, or another's advantage; whether the testimony be delivered on oath, or not; or whether the desired end be, or be not attained.

152. *c*.

152.

c. Those who assume a false name, dignity, character or condition; who attribute to themselves civil or judicial employments; who give themselves out for proprietors of another's possessions, and under a borrowed appearance, appropriate to themselves unlawful gain, for the purpose of prejudicing any one in the possessions, honour, liberty, or rights, to him belonging; or of engaging any one in unlawful actions, which he would not have determined to commit without the intervention of the fraud.

153.

d. Those who take advantage of the understanding of a man less enlightened than themselves, of his ideas, as yet obscure concerning religion; or of his prejudices for the purpose of rendering him refractory to the laws; or of inducing him to commit such actions as tend to his disadvantage, or to that of others.

154.

e. All professing the law, and all counsellors, or advocates, when to the detriment of the person who has entrusted them with his defence, they discover to the adverse party, secrets which have come to their knowledge in the course of the
the

the affair they have undertaken to prosecute; or when they are knowingly favourable to the adverse party, in the composition of the writings of the process; or when by word or action they give assistance against their own party.

155.

As the particular cases of frauds here expressed, do not comprehend the whole extent of this kind of offence, and as the means of committing frauds may be as multiplied in their manner, as various in their degree of malignity, it is not possible to establish a determined punishment relative to this offence; the milder or more rigorous punishment of which, depends on the circumstances that accompany it: but, in general, it shall be punished by the continual imprisonment, or by imprisonment for a limited time, by the severe and milder imprisonment, and by condemnation to the public works; reserving, moreover, to the person deceived or wronged, the right of entire satisfaction and recompense. According to circumstances, any other more rigorous punishment may be pronounced against this offence. The punishment shall be augmented, when any one has effectively sustained considerable damage, or the loss of a lawful advantage, by the fraud; when the stratagem made
use

use of was contrived in such a way, as to make it impossible to prevent or hinder it; when the offender has often repeated the fraud, or when he has already been punished for this offence; when the deceiver, by the near relation in which he stood with him whom he deceived, abused the just confidence placed in him; when the deceiver has violated the essential duties to him known of any charge, for which he has taken the customary oaths to his prince or superiors; and when the false testimony given has been accompanied by an oath.

156.

He who takes away by fraud, a moveable not belonging to him, from the possessor or proprietor, without his participation and consent, commits a theft which comes under the jurisdiction of a criminal court, when either the value of the effect stolen, by one or more attempts, is of consequence, that is to say, when it exceeds the sum of 25 crowns, Vienna currency; or when the manner of purloining an object of small value, is attended by the aggravating circumstances contained in article 160, from the letter c, to the letter n. When the theft is in one of these two predicaments, it is a criminal offence, without its being necessary to examine, whether the

the negligence of the possessor in keeping the object, have occasioned the theft, or have facilitated it; or whether the object stolen, have been restored or made good to him, from whom it has been stolen. Only, when before the judicial discovery of the offender, the free and voluntary restoration of the object purloined has taken place, the theft ceases to be a crime, even though it should happen that by the intermediate detention of the effect stolen, he, in prejudice of whom the theft was committed, should sustain a damage exceeding 25 crowns.

157.

He is also guilty of theft who appropriates to himself, or detains from the proprietor, in totality or in part, an effect entrusted to him, for the purpose of his keeping, taking care of, selling, or working on the same.

158.

He also shall be considered as guilty of theft who conceals, detains, or takes away, from lawful creditors, a part of the effects from which they had a right to expect payment.

159.

For a theft unaccompanied by any aggravating
F circumstances,

circumstances, the punishment is the severe imprisonment for a limited time, in the first degree, and condemnation to the public works.

160.

But if the theft have been committed, *a*, by a male or female servant, to the prejudice of their respective masters; *b*, by a workman or day-labourer, to the prejudice of his master, or of him who employs him; *c*, during the night; *d*, by taking away a moveable, secured in any manner, be it even in a wood, inclosed with walls, hedges, or otherwise; *e*, in company with several others, if the object have been stolen; *f*, during a fire; *g*, on occasion of a shipwreck, or any other accident on the water; *h*, at the time of an epidemical disease; *i*, or if the theft have been committed at a moment, when the person who sustained the loss, was less capable of attending to his affairs, on account of some affliction he had met with; *k*, or in a place consecrated to the Supreme Being; *l*, if the proprietor, either because he possessed little property; *m*, or because the value of the effect stolen is considerable, sustain sensible damage; *n*, or if the theft have been committed by a person to whom the effect stolen, whether private property, or belonging to the sovereign, has been entrusted,

on

on the faith of an oath or juridical obligation. In all these cases the punishment is imprisonment for a limited time, in the second degree, and condemnation to the public works. But with the aggravating circumstances expressed in this article, under the letters *a, b, c, f, g, h, i, and n*, the continual imprisonment, in the first degree.

161.

Notwithstanding the public punishment, the right of seeking entire satisfaction from the hands of him who committed the theft, is reserved to the person robbed or wronged.

162.

The taking away of wood from an open forest, does not come within the jurisdiction of a criminal court. It belongs to civil judicature alone to take cognizance of, and punish it.

163.

An accomplice and abettor of the theft, is he, who buys or sells any effect, knowing it to be stolen; or who receives the stolen effect, or favours the execution of the theft, or watches an opportunity for the theft, or directly or indirectly assists in the same, if only by giving advice, even

F 2

though

though he should not have touched the object stolen, or otherwise had a share in the theft.

164.

The punishment of him who is accomplice or abettor of a theft, is the milder imprisonment for a limited time, in the first degree, and condemnation to the public works.

165.

He, who to commit a robbery, either alone or in the company of several others, lays violent hands on any person, and forces him by a real action, or by threats of violence, to discover an effect, on which he has felonious views, is guilty of an assault with intent to rob; and if the theft ensues, of a robbery.

166.

In like manner, is guilty of a robbery, and assault with intent to rob, he, who on the highway attacks a traveller, or otherwise any man on his way on an open road, with the intention of taking from him, in totality or in part, the goods and effects he may have about him; or he, who really steals them, even though the action be not attended by an actual violence.

167. If

167.

If the assault with intent to rob, or the robbery, were committed with so much violence, that the person assaulted was wounded, or even killed, the punishment is the severer imprisonment of long duration; and if the action were committed with particular cruelty, the chain of long duration, in the first degree. If the robbery were committed without any violence whatever, the offender shall be punished by the severe continual imprisonment, in the first degree; and by the continual imprisonment, in the second degree, when the assault with intent to rob, was committed with dangerous weapons, or in the company of several robbers, or in a lone and seldom-frequented house.

168.

He who carries off a beast that does not belong to him, from flock, herd, or pasturage, shall be considered as a robber.

169.

The punishment of this theft is imprisonment for a limited time, in the second degree; but the imprisonment shall be of the severe kind, and followed by condemnation to the public works.

F 3

170. He

170.

He who undertakes an action, from which fire may ensue, or with the view, and ill intention either of causing damage or prejudice, or of procuring an opportunity of profiting by the disorder which takes place on such occasions, to execute any crime, or evil design, shall be considered as an incendiary, whether the fire break out, or be stifled without effect, or whether the damage resulting from it be considerable or not.

171.

The punishment of an incendiary is, in general, the severe continual imprisonment, with condemnation to the public works; continued in the first degree, only when the flames have been stifled without prejudicial effect. But the act of setting fire to any thing, *a*, during the night; *b*, in a solitary unfrequented place; *c*, in a camp; *d*, in a magazine; *e*, in a forest; *f*, in a timber yard; *g*, in a barn; *h*, among fruits of the earth in the open fields; or *i*, in places destined for the preservation of gunpowder, or other inflammable matter; or *k*, with such circumstances as evidently put men's lives in danger, even though it should fail of effect, shall be punished by the severe imprisonment of long duration, in the first degree.

172. If

172.

If the flame break out, and if, *a*, it ~~cause~~ the death of one or more persons; or if, *b*, the fire have occasioned considerable damage, or have reduced any one to indigence; *c*, if this crime has been committed before by the offender; *d*, or if any circumstance shew that it was committed with particular malignity, the incendiary shall be punished by the severe imprisonment of long duration, in the second degree, and by condemnation to the public works, which may be augmented by other chastisements, according to the difference of circumstances. In other cases, when the flame has broken out, the punishment of the offender is the severe continual imprisonment, in the second degree, and condemnation to the public works.

173.

Moreover, the right of suing the offender for intire satisfaction, is reserved to the person who has suffered loss or damage.

174.

He who in time of war, with a premeditated design, sets fire to any thing in the country of an ally, or even in the enemy's country, with-

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out

out having received orders, shall be punished according to the laws of war. Military judicature alone has a right to take cognizance of, and judge this offence,

175.

He who, bound by the tie of lawful matrimony, concludes a second marriage with another person, single or married, is guilty of bigamy.

176.

If the person with whom the offender contracted the second marriage, was acquainted with the first, the punishment of the offender shall be the severe imprisonment for a limited time, in the second degree, or condemnation to the public works. The punishment of the accomplice shall be the milder imprisonment for a limited time, in the second degree, or condemnation to the public works.

177.

If, on the contrary, the bonds of the first marriage were concealed from the person with whom the second was contracted, the offender shall undergo the punishment pronounced against fraud, in the 155th article; the right of intire satisfaction being reserved, to the innocent person.

CHAP.

C H A P. VII.

OF THE EXTINGUISHMENT OF OFFENCES AND
PUNISHMENTS.

178.

THE offence and punishment are annulled by the death of the offender, whether he die before or after his imprisonment, before or after a juridical inquiry, or before or after sentence is pronounced.

179.

However, when the offences in question, from their highly infamous nature, have awakened great attention in the public; or when they have been followed, before the death of the offender, by condemnation to a punishment of long duration, the dead offender shall be treated as is expressed in the 17th article.

180.

The offence and punishment are in like manner annulled, when the sovereign, or a subordinate magistrate, authorized to remit them, without

without exceeding the exact limits of the power vested in him, remits in totality, or in part, the punishment pronounced. When a part only of the punishment has been remitted, the offence shall not be considered as annulled and abolished, till the execution of the part not remitted has fully taken place.

181.

He who by the jurisdiction of a lawful criminal court, after the customary juridical inquiry, has been declared acquitted of the offence laid to his charge, and whose case has been discussed in the trial, in such a manner that his innocence has been acknowledged as proved and demonstrated, cannot, on account of the same offence, be subject to a new investigation. But if the discharge of the accusation be only the result of a want of legal conviction, as likewise if the inquiry only ceased for want of proofs, a second inquiry may be set on foot, as soon as any new evidence may appear, with which the judge was unacquainted, when he first pronounced judgment.

182.

The offence shall be considered as done
away,

away, when the offender has undergone the whole of the punishment pronounced.

183.

No prescription shall in future be allowed for the offence and punishment; but the offender shall be treated as the laws direct, whatever space of time may have elapsed between the committing and the discovery of the crime.

184.

If the offence or punishment have been abolished by the suffering of the penalty in its full rigour and duration, or by the remission thereof, the offender (who was such before) shall be considered as intirely purged of his guilt, and shall be restored to all civil and social rights, provided their loss be not a consequence, or an exprefs part of the sentence of punishment. He shall therefore meet with neither hindrance nor constraint, from any person whatever, in the enjoyment of the aforesaid rights, while his future conduct shall be conformable to the laws of honour and probity; nor shall any one be permitted to reproach him with what is past, relative to which, in like manner, he shall neither be wronged nor insulted.



S E C O N D P A R T.

OF CIVIL OFFENCES AND PUNISHMENTS.



CHAPTER THE FIRST.

OF CIVIL OFFENCES IN GENERAL.

I.

WHAT is to be considered as a civil offence, shall be solely determined by the present code of punishments: the actions not expressly named in this code, do not come within the description of civil offences. However, other actions, contrary to law, are not the less subject to public inspection; and after their discovery, are equally the object of punishment; but they shall be proceeded against according to the particular regulations relative thereto.

2. The

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The accusation of a civil offence, is grounded on the action voluntarily committed; therefore, when an action, in common with a criminal offence, has been committed in the circumstances expressed in the 5th article of the first part, the offender cannot be accused of a civil offence.

3.

The accusation of a civil offence, does not merely regard the person who committed it, or him who of his free-will co-operated therein; but him also who knowingly occasioned the consummation of the action, or derived advantage from it.

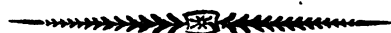
4.

A mere simple attempt does not admit of the accusation of a civil offence, whether this attempt has been discovered by any marks, signs, or preparations whatever; or whether from any circumstance whatever, the consequent action remains unaccomplished.

5.

The accusation of a civil offence, takes place
and

and is made, according to the laws and customs of the country in which the action was committed. A subject of the empire who commits a civil offence in a foreign country, is only punishable, according to the present laws, when he repairs to a foreign country, for the purpose of committing the action. In such cases, the action shall be treated as if it had been committed in the place affected by its operation.



C H A P. II.

OF CIVIL PUNISHMENTS IN GENERAL.

6.

A Civil offence discovered and proved, is punished by a civil punishment, which the civil magistrate alone shall pronounce.

7.

But if the offender, in addition to the civil offence, have been likewise guilty of a criminal offence, he shall be delivered over, without delay, to the criminal judge. The punishment shall be proportioned to the criminal offence;
and

and for the augmentation of this punishment, regard shall be had only to the civil offence.

8.

The civil judge is bound to conform himself, in the sentence of punishment to the present penal code. He has neither the power of changing the manner of inflicting the punishment established by this code, nor of increasing or diminishing the degree thereby determined, Only when the determined degree admits of a more rigorous or milder judgment, recourse must be had, for the just proportioning of the punishment, to the directions given to the criminal judge, in the 14th article of the first part, to attend as well to the tendency of the action, as to the intention of him who committed it.

9.

The punishment inflicted and accomplished in its full form and extent, does not dispense the offender and his heirs from the obligation of making good the losses of the person wronged by the action. But the punishment has no relation whatever to the heirs and kin.

10.

The civil punishments to be inflicted in future,

ture, are corporal correction, the pillory, confinement, condemnation to the public works, fetters, and banishment from a determined place. Pecuniary penalties cannot be imposed but in the single case of prohibited games.

11.

Corporal correction may either be pronounced alone as a punishment, or may be added as the augmentation of another punishment. This correction shall always be public. The gradation of this kind of punishment, in civil offences; is determined in this manner. A man shall not receive more, at one time, than fifty strokes with a stick of walnut tree; a woman not more than thirty strokes with a switch or bull's pizzle. These strokes shall not be applied on the back or thighs, but constantly on the buttocks, the offender being extended on a bench for this purpose. The judgment shall express the precise number of strokes, and the reiteration of the correction thus determined.

12.

The pillory (or *public exposure*) consists in keeping the offender in fetters, on an elevated scaffold, in a place capable of containing a great number of people, from noon till one o'clock,

G

with

with his head bare, and with a writing fixed on his breast, denoting the offence of which he is guilty. The sentence may order this punishment of the pillory, to be inflicted once only, or to be repeated two or three times.

13.

The confinement is either rigorous or mild. In the rigorous confinement, *a*, fetters are put on the feet of the condemned offender; *b*, nothing but planks are given him for a bed; *c*, he is allowed to receive no visit, but in the presence of an officer of justice; *d*, nothing but water is given him to drink; and *e*, a task proportioned to his strength is imposed on him.

14.

In the milder confinement, the condemned offender is exempted from fetters on his feet, and his nourishment is such as he is capable of procuring by his own means, or by the support of his friends, provided it be voluntary, and not obtained by dint of demands; the profit of his labour is likewise left to his disposal; but he is nevertheless forbid to have any kind of bedding, or straw, even though procured with his own money.

15. In

15.

In cases where this code directs the infliction of the milder confinement as a punishment, confinement to his house may also be pronounced on the condemned offender, who is of noble family, invested with any public charge, or exercising any profession, provided his conduct be otherwise irreproachable, and his reputation good. The sentence of confinement to his house, obliges the offender to remain in his dwelling during the whole time of his condemnation, and not to quit it on any pretence whatever. Confinement to the house may be pronounced with an appointed guard, or with the *parole* of the condemned offender, that he may not elude the punishment. If he, on whom confinement to his house has been pronounced, quit it, he shall be condemned to confinement in the public prison, during the whole time fixed by the judgment.

16.

This punishment may be augmented by fasting: namely, all nourishment, except bread and water, may be refused the condemned offender, during the whole time of his confinement.

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17. The

17.

The duration of the two kinds of confinement, or the condemnation to the public works, is continual, or is for a limited time. The duration, for the time limited, may be pronounced from one day to a month; the continual duration can never be pronounced for less than a month, nor exceed a year. The exact duration shall be clearly expressed in the sentence of punishment. As to those who are charged with an employment, or those to whose subsistence, or that of their children, or of all those belonging to them, directly or indirectly, the too long duration of the punishment would be prejudicial, the merited rigour of the punishment shall consist rather in augmentation than duration.

18.

Banishment from a fixed place, cannot extend beyond a single place, and cannot hinder the offender from seeking a livelihood in every other part. The condemned offender can never be banished from the place of his birth, nor from a place in which he has resided ten years, except in offences of the kind expressed in the articles 71 and 73.

CHAP.

C H A P. III.

OF CIVIL OFFENCES THAT ENDANGER THE
LIFE AND HEALTH OF CITIZENS, OR THAT
ARE THE OCCASION OF DAMAGE AND
PREJUDICE.

19.

HE who, without any particular ill intention, by the purchase of any poisonous merchandize, is the cause of any damage to his neighbour, or who only gives a distant occasion of damage, is guilty of a civil offence.

20.

The apothecary is guilty of a civil offence, who sells any prohibited drug, or who prepares any adulterated or falsified drug.

21.

If the offender has caused any immediate damage, the punishment is the severe continual imprisonment, or condemnation to the public works. But if the action of the offender were only the remote cause of damage, the punish-

G 3

ment

ment is the severe imprisonment for a limited time.

22.

When a child or a man incapable of guarding against danger himself, meets with an injury, or death, or a wound, in crossing a river, or by falling into the water, which accident might have been prevented by the due and reasonable vigilance of him, who is bound to pay attention to the said man or child, by the obligation of a natural duty, or by a charge juridically imposed on him, the negligence of this person is a civil offence.

23.

The punishment of this offence is the milder imprisonment for a limited time. But if death, or a considerable wound have resulted from it, this punishment may be augmented.

24.

The same punishment shall be also inflicted on him, who riding with too much speed, or driving a carriage too rapidly, has wounded or killed any individual.

a, He who, leaving a province, which, through fear of the plague, is subject to quarantine, or round which a line (*of troops*) has been drawn, and going by land, by a road that has not been appointed and indicated for that purpose, or debarking by sea at a place named *Porti Morti*, that is to say, a port and haven shut up, enters the state for the purpose of importing or exporting merchandize; *b*, who passes the line without making his declaration to the officer appointed to receive it; *c*, he who steals away privately from a suspected place, and who, to continue his way, makes a false declaration respecting the place from whence he comes; *d*, he who to pass, fabricates forged bills of health; he who co-operates in the fabrication of these false bills; he who makes use of them, though fabricated by others; *e*, he likewise who makes use of a good and valid bill of health belonging to another; *f*, he who knows any thing of a false bill of health, or of a good one illegally employed, and does not lodge an information on the earliest opportunity; *g*, he who quits the house destined for the performance of quarantine, before he is intirely purified, in the manner directed; *h*, he who be-

fore the quarantine is expired, without the consent of the inspector-general of the quarantine, approaches and enters into familiar converse with a healthy person ; *i*, even a healthy person, who, without the permission of the inspector-general of the quarantine, approaches the place appointed for its performance, to hold familiar converse with the persons there ; all the people above-mentioned are guilty of a civil offence. Is likewise guilty of a civil offence ; *a*, an officer appointed to the care of the line, who suffers any persons or merchandize to enter the state by prohibited roads, or even by lawful roads, without performing quarantine ; or who exempts any one from quarantine, before the lapse of the time prescribed ; *b*, who gives a false bill of health, or who grants passage to any one, in virtue of a false bill of health, or of a good bill of health illegally employed ; *c*, as also the officer second in command, who knowing a passage into the state to have been granted contrary to law, or any one to have been exempted, or to have fled from quarantine, does not immediately make his report : *a*, in short, he also commits a civil offence, who by his advice in pointing out the road, or in any way whatever, assists any one in turning aside from the road prescribed ; *b*, he who takes charge of persons,

persons, or of foreign merchandize, who conveys them, or brings them out of a suspected place, without the necessary passport and bill of health, is likewise guilty of a civil offence; and, as also is he, who in a place near the line, receives and keeps in his dwelling any persons or foreign merchandize, with bill of health, or without the bill of health's being acknowledged valid, after the inspection of the writing, by a magistrate.

26.

All these offenders shall be delivered over to a military court of justice, and shall be judged by that court alone according to the laws it shall be necessary, for the security of the subjects of the empire, to establish, in proportion to the danger.

27.

Besides the offences already expressed, that are contrary to the general good, as far as health is concerned, all actions shall be considered as civil offences, which he who commits them knows to be prejudicial, or likely to be prejudicial to health; and as in such circumstances, it is not possible to provide for all that interest, cunning, and malignity may invent,
nor

nor to express all possible cases and actions in this code, mention is made of the most customary, without exclusion of the rest. *a*, When a dead beast has been thrown into a stream or river; *b*, when the necessary precautions prescribed by the laws of health are neglected, in cases of beasts dead of a distemper among cattle; *c*, when any one neglects to make a declaration of the symptoms of madness he has observed in a beast belonging to himself; *d*, when in frequented places, stakes have been placed, or pits dug to serve as traps.

28.

The punishment of these offences, is condemnation to the public works, with or without fetters, the duration of which shall be determined according to the damage that has resulted from the action.

C H A P. IV.

OF CIVIL OFFENCES, THAT AFFECT THE
FORTUNES AND RIGHTS OF CITIZENS.

29.

HE who takes away in a fraudulent manner, either alone, or with one or more assistants or accomplices, at one, or at several times, from one or more proprietors, without their consent or participation, any moveable, amounting to the value of 25 crowns, Vienna currency, or even less, is guilty of theft, which shall be proceeded against as a civil offence, when the manner of taking it away is not accompanied with the aggravating circumstances contained in article 160, of the first part, from the letter *c* to the letter *n*.

30.

Be the effect purloined even of greater value, the thefts following come within the description of civil offences: *a*, The carrying away of wood which has been cut in an open forest; *b*, the act of poaching, undertaken by a person unqualified to kill game, whatever be the manner,

manner, or even the event, if it proceed from private motives ; c, the carrying away the fruits of trees, or of the earth, from the open fields.

31.

A servant is guilty of a theft, which shall be considered as a civil offence, as well when he steals from his master an effect belonging to him, of the value expressed in article 29, as when he reckons merchandize bought for his master at a higher price than he paid for it, or when he furnishes merchandize of inferior quality and weight, to what was either delivered to him, or his master paid for.

32.

The punishment of theft, considered as a civil offence, is confinement, corporal correction, and the augmentation of the punishment, should it be requisite, according to the degree of the fraud employed, or the damage sustained in consequence, by the person robbed. If the offence have been repeated, care shall be taken to keep the offender, after he has suffered the punishment relative to the offence, during the whole of the limited time, under the eye of the police, that attention may be paid to his conduct,

duct, and the honesty of the means he may employ to gain a livelihood.

33.

He who, in playing at a game allowed by law, uses fraud, in whatever manner it may be executed, for instance, who employs cards false or marked, or dice false or marked, or who profiting by the person's turning aside, takes for himself the cards of another, or who enters into a combination with a third person, to obtain, by those means, a knowledge of another's cards, is guilty of a civil offence.

34.

If the offender have made a business of this manner of deceiving, if by this fraud he have deceived two persons, the administration of whose property is not in their own hands; or if the damage have been of consequence to him against whom the fraud was employed; if the manner of deceiving were so artful, that it would have been difficult to guard against it; this offence shall be punished by the pillory and condemnation to the public works. When none of the circumstances above-enumerated, appear, the severe imprisonment for a limited time, shall be pronounced as the punishment of the

the offender. The offender is moreover obliged to restore to the person deceived, the amount of the winnings of all the play, in which he has been convicted of fraud. When the offenders are foreigners, the pillory and banishment from all the hereditary dominions, shall be the punishments pronounced.

35.

All those are accomplices of this offence, who have knowingly co-operated in any manner whatever in the execution of the fraud; or who have given instructions to a third person, tending to forward the practice of the same.

36.

The punishment of co-operation in this offence, is the milder imprisonment for a limited time, and this punishment may be augmented by fasting. The punishment of instruction given concerning foul or fraudulent play, is the severe imprisonment for a limited time; and it may be augmented by corporal correction. The right of exacting entire satisfaction from the accomplice, is moreover reserved to the person wronged, if the offender himself cannot make good the damage.

37. He

37.

He who plays at a prohibited game, is guilty of a civil offence.

38.

He in whose dwelling the prohibited game is played, is also guilty of a civil offence.

39.

The transgressors of this prohibition, as well the players themselves, as those in whose house the prohibited game is played, shall, in such cases, be punished by a fine of 300 ducats; and the amount of this fine shall be carried to the treasury of the place. Upon which, he who has given information of the prohibited game, and whose name shall be concealed, shall receive 100 ducats; and though it should even be one of the players, or even those who have kept the gaming table, who should lodge the information, the same recompense shall be granted them; and the punishment they have merited shall moreover be forgiven them. If the offender, not having the means, cannot pay the determined fine, he shall be condemned to the milder imprisonment for a limited time.

40. When

40.

When a person in the authorized sale of a merchandise, sells it at a higher price than that fixed by the police; or when he sells merchandise by false weight or measure, he renders himself guilty of a civil offence.

41.

In general, for this offence, the milder imprisonment for a limited time shall be pronounced as punishment; which may be augmented when the fraud or fraudulent sale has been long practised, when it has been prejudicial to the public, or when it has been carried on in a manner difficult to detect.

42.

Among those guilty of civil offences, shall be included, those who with an equal intention of deceiving, interfere in the affairs of a third person; and by means of false appearances, devised on purpose, bring on and give occasion to warm disputes and discussions.

43.

The punishment of this offence, is the milder imprisonment for a limited time. But when the offender has made a business of this deceit;
when

when the extortion of considerable sums of money have resulted from it; when subjects have behaved insolently to the magistrate; when in the writings presented, false declarations, malignant turns, and unjustifiable expressions, have been made use of; and when a punishment already decreed and inflicted, has been ineffectual; the punishment of confinement shall be augmented by fasting and corporal correction. In cases where requisite, the pillory may also be pronounced as punishment. As to foreigners, they shall be banished from the hereditary dominions,

44.

He who, united with a wife by the bonds of lawful marriage, keeps up a carnal correspondence with a single person, or with one that is married, commits adultery.

45.

A civil court of justice shall never take cognizance of this offence, in virtue of the charge and power vested in it; but only when the party wronged, man or woman, expressly demands an inquiry and punishment. However, they shall no longer be entitled to a hearing, when they have forgiven the offence, after its coming to their knowledge, either expressly, or by continuing

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continuing

tinuing to live as man and wife in the same house.

46.

The punishment of adultery, is corporal correction or imprisonment for a limited time, rendered more rigorous by fasting. The punishment is at an end the moment the party wronged, declares a wish to live again with the offender in conjugal union.

47.

A civil offence is committed, when a person makes a contract of marriage in the hereditary dominions, without mention of an impediment to him known, and founded on the laws of the country; and who marries without the usual dispensation previously granted: or when a native of the country repairs to a foreign part, to conclude a marriage that he would not be authorized to conclude by the laws of the country; or when parents make an ill use of their power over their children, to force them to a marriage contrary to their inclinations, in a manner which, according to law, constitutes the validity of the contract.

48.

The punishment of this offence, is the severe imprisonment



imprisonment for a limited time, and condemnation to the public works. The suborner shall be proceeded against with greater rigour; and the punishment shall be augmented, when the impediment has been entirely concealed from the party, by which means, he or she has been innocently drawn into a marriage null and void.

49.

Shall be proceeded against as guilty of a civil offence, a servant, *a*, who receives money, as earnest, of several persons at a time, and who thereby engages himself to serve several masters at a time; *b*, who, after the earnest money has been received, does not enter into the service; *c*, who leaves a service without observing the established formalities relative to servants; *d*, who ill-treats his master, either by injurious language, or in a manner openly indecent; *e*, or who causes damage and prejudice to his master, by evident negligence, or by refusing to fulfil a duty imposed on him by the nature of his place.

50.

On the express complaint of the master wronged, the offender shall suffer corporal correction, or be condemned to the severe or milder imprisonment for a limited time, according

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as

as the circumstances may prove more or less malignity, or more or less damage and prejudice.

51.

The master who gives a servant, on leaving his house, a certificate of fidelity, while his infidelity is known to him, is guilty of a civil offence.

52.

The offender is punished, by the milder imprisonment for a limited time.

53.

He who, even without an evil intention, describes any one in defamatory libels, or in disgraceful prints or drawings, in such a way as may draw upon this person, by reason of the false imputation of an action, contrary to law, the suspicion of merited contempt, is guilty of a civil offence, whether the said person have suffered damage, prejudice, or the loss of an expected advantage, or whether his domestic peace have been disturbed thereby or not.

54.

The punishment of this offence is the milder imprisonment for a limited time, or condemnation

tion to the public works. But to the person wronged is still reserved the right of entire recompense and satisfaction. However, when the shame has fallen on a person who, by reason of the purity of his manners and conduct, on account of his dignity and of the importance of the character with which he is invested, or on account of his birth, or on account of the judicial power he has over the person by whom he has been defamed, or, when between the person who defames, and the person defamed, the relations expressed in article 85 and 92, of the first part of this code, exist, the punishment is the severe imprisonment for a limited time; and this punishment may be augmented by the pillory, and corporal correction.

55.

He is also guilty of the offence of calumnious defamation, who, even without having composed or occasioned the defamatory libel, or disgraceful print or drawing, without even having co-operated in the same, has nevertheless distributed and made public the libel, print, or drawing, instead of suppressing them as soon as they came to his knowledge.

56.

The punishment is the milder imprisonment
H 3 for

for a limited time; and this punishment, according to the intervention of the circumstances in article 54, may be augmented by fasting.

57.

In the number of civil offences shall be included an action that is inconsiderate and dangerous in such a degree, as that by the smallest accident fire might result from it, and the effects and lives of citizens be endangered. For instance, *a*, when any one smokes tobacco on a stair-case, in a stable, in a timber-yard, or in rooms and magazines filled with combustible matter; *b*, when any one enters these places with a naked light; *c*, or especially when an action is committed, notwithstanding its being precisely contrary to the order established relative to fire.

58.

The punishment is the milder imprisonment for a limited time, or in cases of particular imprudence, corporal correction.

59.

Every act of hasty petulance, committed in the open streets, and occasioning inconvenience or damage to one or more persons, shall be considered

sidered as a civil offence. As these kinds of heedlessness and extravagance are too numerous to be expressed in a code, those only which most frequently occur will be mentioned here, without exclusion of others: as, *a*, when a person destroys, damages, or throws down, what has been constructed, built, or planted, for the utility, convenience, or pleasure, of the public; *b*, when a person throws into windows or houses any thing that may occasion damage or prejudice; *c*, when a person throws water on the passers by, pushes violently against them, throws them down by his precipitate speed, tears their clothes, or causes, in any manner whatever, inconvenience, loss, or prejudice; *d*, when a person by asking charity with importunity, forces alms to be given him.

60.

As the circumstances of heedlessness and hasty petulance are too various to admit of proportioning the punishment to each several case, it is in general directed by the law, that relative to the damage done one or more persons, and the importance of that damage, not only imprisonment, whatever may be its duration, or condemnation to the public works, may be pronounced, but the pillory, and corporal correction also may be inflicted.

C H A P. V.

OF OFFENCES THAT TEND TO THE CORRUPTION OF MORALS.

61.

HE who renounces his reason so far as wickedly and rashly, by words, deeds, or actions, to insult the Supreme Being, in any public place, or in the presence of other persons, shall be treated like a man out of his senses, and shall be kept in the hospital destined for madmen, until his amendment shall be perfect and assured.

62.

Every action by which the public and divine exercise of an established or tolerated religion has been disturbed, which has evidenced decided extravagance, or open contempt in a place of worship, or which has been contrary to the respect due to every thing that regards divine worship, is a civil offence.

63.

The punishment of this offence is the severe imprisonment

imprisonment for a limited time; and this punishment may be augmented by fasting and corporal correction, when the action has been notoriously scandalous.

64.

He also commits a civil offence, who takes upon him, by false instructions, or delusive arguments, to prevail on a disciple of the Christian religion to abandon the catholic faith, and to engage him to renounce all religion, or embrace one that denies the holy Gospel.

65.

He who takes upon him publicly to insinuate into any community observant of the established religion, heresies, or false doctrines, manifestly acknowledged to be such, and to lead such community away from the established religion, is likewise guilty of a civil offence.

66.

In the first case the offender shall be pilloried, and condemned to the severe imprisonment for a limited time. In the second case the punishment is the severe continual imprisonment.

67.

He who in a public street, or frequented place,

place, shamefully uncovers himself, or commits an indecency, or the person who persuades any one, in a public street, to commit an indecency, be it man or woman, is guilty of a civil offence.

68.

The punishment is imprisonment for a limited time; which may be severe and mild, according to the circumstances; but this punishment shall always be augmented by fasting.

69.

He who in an open street follows a woman of good reputation and decent carriage, and addresses her with gestures, or discourse which clearly expresses an intention to engage her in shameful debauchery, shall be considered, on the complaint of the woman offended, as guilty of a civil offence.

70.

The punishment is the milder imprisonment for a limited time.

71.

He who degrades human nature so far as to have carnal commerce with a beast, or with a person of the same sex, is guilty of a civil offence.

72. If

72.

If the offence have been committed in such a manner as to have been notoriously scandalous, the punishment is corporal correction, and condemnation to the public works for a limited time. If the offence have been but little known, the offender shall be condemned to the severe imprisonment for a limited time; and this correction shall be augmented by fasting, and corporal correction. The offender shall also be banished from the place where his offence has been publicly scandalous.

73.

He who consents to shameful debauchery in his house, who seeks gain and profit by procuring to persons of different sexes opportunities for shameful debauchery; or he who, without seeking to reap advantage from thence, engages a woman among acquaintance, and gives opportunities by which she is seduced to shameful debauchery, is guilty of the civil offence of procuring, though he should be only concerned as friend or servant of him to whom he has given aid and assistance in the same offence.

74.

The punishment of this offence is, for the first

first time, condemnation to the public works for the *continual* term. However, this punishment shall be augmented, when an innocent person has been seduced. If the offender repeat the offence, he shall be pilloried, receive corporal correction, and be banished from the place in which the offence was committed.

75.

Any person, whether man or woman, who makes a business of prostitution, and derives profit from thence, is guilty of a civil offence.

76.

The offender shall be punished, for the first time, by the severe continual imprisonment. If the offence be often repeated, the last punishment inflicted shall constantly be doubled and augmented by other punishments; by fasting, or corporal correction, if the persons seduced be children at the age of puberty. If the offender be a foreigner, he shall be banished from all the hereditary dominions.

77.

Shall be included in the number of those who commit civil offences tending to the corruption of good morals, a, a person who deals
in



in prohibited books, or pictures and prints which represent indecent actions; *b*, those who, out of the limits of the places of amusement allowed by the magistrate, disguise themselves with masks, or in any other manner; *c* he who procures admission into societies and secret fraternities, which have not been notified to the magistrate; *d*, he who, without making a declaration to the magistrate, harbours in his dwelling any person whom he does not know to have honest means of procuring a livelihood.

78.

The punishment of this offence is the milder imprisonment for a limited time; the prohibited books, the pictures and prints, shall be taken from the offender, confiscated and destroyed.

79.

When a person, against whom sentence of banishment from a particular place has been pronounced by the magistrate, returns to the place from whence he has been banished, while the prohibition against his appearing there still exists, he is by that alone rendered guilty of a civil offence, even though nothing in his conduct be liable to reproach.

80. The

80.

The punishment is the severe imprisonment for a limited time, or corporal correction; and it shall be signified to the offender, that each time he returns the punishment shall be doubled.

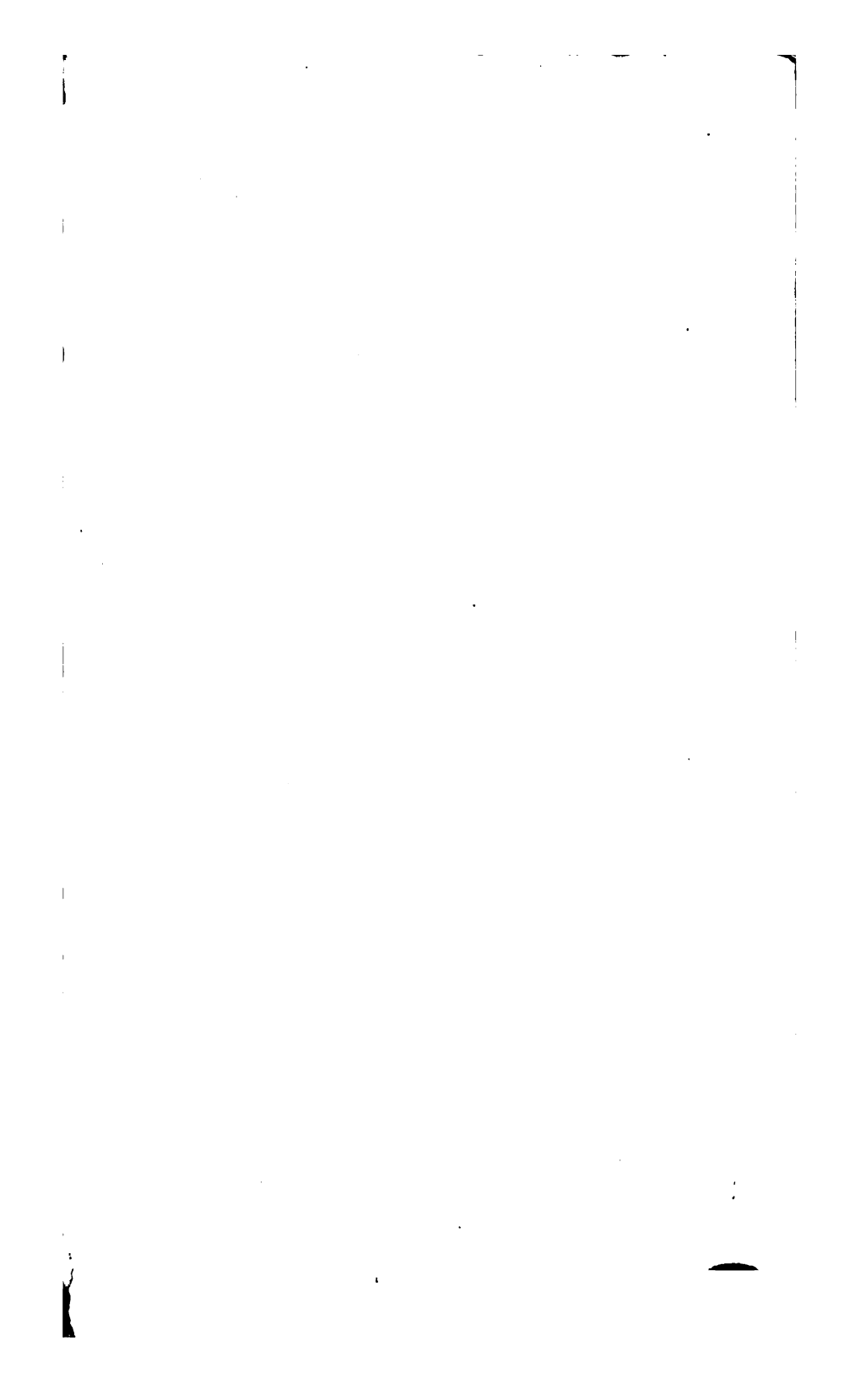
81.

When a person, who has been banished from the whole of the Austrian dominions, returns, on any pretext whatever, without having previously obtained the taking off of the prohibition, this return constitutes a civil offence, even though the conduct of this person, after his return, should be regular and irreproachable.

82.

The punishment is corporal correction; which shall be doubled at each successive return, and the offender shall moreover be banished anew from the hereditary dominions.

T H E E N D.







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